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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
COUNTY OF MARICOPA

SKIN BY KM, LLC, an Arizona Limited
Liability Company,

Plaintiff,

vs.

CURATEMD SKIN BAR LLC, an
Arizona Limited Liability Company;
CURATEMD SKIN BAR AT
CHANDLER LLC, an Arizona Limited
Liability Company; JOHN DOE and
JANE DOE, husband and wife; JOHN
DOES and JANE DOES I-X; ABC
CORPORATIONS I-X; and BLACK and
WHITE PARTNERSHIPS and/or SOLE
PROPRIETORSHIPS, I-X,

Defendants.

No. _____

COMPLAINT

JURY TRIAL REQUESTED

Assigned to Hon. _____

Plaintiff Skin by KM, LLB d/b/a “Curated Medical” (“Plaintiff” or “Curated Medical”), by and through undersigned counsel, seeks relief against CurateMD Skin Bar LLC (“CurateMD 1”), and CurateMD Skin Bar At Chandler LLC (“CurateMD 2”) and other named parties (collectively “Defendants” or “CurateMD”) for the causes stated below. In support of this action, Plaintiff alleges upon information and belief the following:

PARTIES AND JURISDICTION

1
2 1. Plaintiff is an Arizona limited liability company with its principal place of
3 business in Maricopa County, Arizona.
4

5 2. Upon information and belief, CurateMD 1 is an Arizona limited liability
6 company with its principal place of business in Maricopa County, Arizona.
7

8 3. Upon information and belief, CurateMD 2 is an Arizona limited liability
9 company with its principal place of business in Maricopa County, Arizona.

10 4. Upon information and belief, fictitiously named defendants, JOHN DOE
11 and JANE DOE, husband and wife, at all times relevant to the instant action, were and are
12 residents of an unknown location.
13

14 5. Upon information and belief, fictitiously named defendant JOHN DOE was
15 acting on behalf of his sole and separate property, and for the benefit of, the marital
16 community comprised of himself and Defendant Jane Doe, whose true name will be
17 inserted upon discovery thereof; The marital community of John Doe and Jane Doe are,
18 therefore, liable for the acts and omissions of John Doe, as alleged herein.
19

20 6. Upon information and belief, fictitiously named defendant ABC CORP. is,
21 and at times relevant to this Complaint was, an unknown entity authorized to do business
22 in an unknown location.
23

24 7. That the true names, capacities, and/or relationship, whether individual,
25 corporate, partnership, or otherwise, of JOHN DOES and JANE DOES I-X, their
26 respective wives, inclusive, and each of them, ABC CORPORATIONS I-X; and BLACK
27 and WHITE PARTNERSHIPS and/or SOLE PROPRIETORSHIPS, I-X are unknown to
28

1 Plaintiffs, who therefore sue said Defendants by such fictitious names, and each of them.
2 Plaintiffs are informed and believes, and therefore alleges, that each of the Defendants
3 designated herein, were either joint tortfeasors and/or jointly and severally legally
4 responsible in some manner for the events and happenings herein referred to, and legally
5 caused injury and damages proximately thereby to Plaintiffs as herein alleged.
6

7
8 8. That at all times herein mentioned, Defendants, and each of them, were the
9 agents and employees of each of the remaining Defendants, including those fictitiously
10 named, and were at all times acting within the purpose and scope of said agency and
11 employment, and each Defendant has ratified, consented, and approved the acts of his
12 agent.
13

14 9. Except as stated otherwise below, all acts and omissions which comprise the
15 basis of this pleading took place in or around Maricopa County, Arizona.
16

17 10. This Complaint is properly filed in respect to an actual controversy of which
18 this Court has original jurisdiction pursuant to 28 U.S.C. §1331; namely, one or more
19 claims under the Lanham Act (15 U.S.C. §§ 1051 *et seq.*).
20

21 11. This Court has jurisdiction over claims arising under state law pursuant to
22 28 U.S.C. §1338(b) and 28 U.S.C. §1367(a).
23

24 12. Venue is proper in this District pursuant to 28 U.S.C. § 1391
25

26 **FACTUAL BACKGROUND**

27 13. Plaintiff incorporates by reference all allegations set forth in the preceding
28 paragraphs as though fully set forth herein.

1 14. Plaintiff began operating in or around April of 2016 in the business of
2 providing cosmetic and wellness services and providing related goods.

3
4 15. Plaintiff has continuously operated in Arizona under the name “Curated
5 Medical” (“Plaintiff’s Mark”) since at least as early as March, 2021.

6 16. Plaintiff is the registered owner of the U.S. Trademark bearing the
7 registration number 7483572 having the literal element “CURATED MEDICAL”.

8
9 17. Plaintiff’s services are and have been in the nature of upmarket medical spa
10 services, including but not limited to administration microneedling, threading, botox,
11 fillers, facials, skin treatments, and semaglutides, as well as providing professional advice
12 and supervision of the administration of said treatments.

13
14 18. Plaintiff’s goods are and have been in the nature of upmarket personal care
15 goods including but not limited to luxury skincare, moisturizers, sunscreen, acne
16 treatments, sun damage treatments, cleansers, serums, and oil treatment pads, as well as
17 providing professional advice on the use of said goods.

18
19 19. Plaintiff is the owner of the Arizona registered trade name for “Curated
20 Medical” as a trade name via the office of the Arizona Secretary of State bearing the file
21 I.D. number 9197842.

22
23 20. Plaintiff operates and has been operating the website bearing the URL,
24 “curatedmedical.com”, since on or about March 9, 2022.

25
26 21. Plaintiff additionally operates a website bearing the URL
27 “curatedmed.com”.

1 29. Defendants' use of the Infringing Brand "CurateMD" is confusingly similar
2 to Plaintiff's Mark "Curated Medical".

3
4 30. Indeed, Plaintiff has become aware of actual confusion in the market caused
5 by Defendant's use of the Infringing Brand.

6 31. One instance of confusion, in a Google review from approximately April,
7 2024, a reviewer complained of unsatisfactory, substandard lip performed by one "Nicole
8 NP" and one satisfactory instance of a "Physique" treatment by one "Lynette" at Plaintiff's
9 place of business.
10

11 32. Despite the assertions set forth by the reviewer in the aforesaid Google
12 review, no one named Lynette or Nicole worked for Plaintiff at that time, and Plaintiff did
13 not offer any treatments under the brand "Physique".
14

15 33. In another instance of confusion, in or about May of 2023, an individual
16 called Plaintiff via telephone, asking to speak to "Nicole". As previously stated, no one
17 named "Nicole" works for Plaintiff.
18

19 34. Upon information and belief, "Nicole" refers to a certain Nicole Kent, an
20 employee working for Defendants.
21

22 35. In another instance of confusion, Plaintiff brought on a skincare line under
23 the brand "Skinbetter". A sales representative for this brand visited Plaintiff's location in
24 person. This sales representative stated that she had been confused about Plaintiff's
25 location.
26

27 36. Upon information and belief, after Plaintiff requested an in-person
28 discussion of the Skinbetter line, the aforesaid Skinbetter sales representative had searched

1 for Plaintiff's address electronically in order to visit in person, only to find both Plaintiff's
2 and Defendant's addresses.

3
4 37. The sale representative, confused and unable to easily distinguish between
5 the two, was forced to call Plaintiff's office to determine which was the correct address.

6 38. In another instance of confusion, on or about August 11, 2023, a prospective
7 patient scheduled an appointment with Plaintiff via Plaintiff's Instagram advertisement.
8 Upon arriving for her appointment, the prospective patient expressed confusion at being
9 scheduled for her appointment at the "further" location rather than the "closer" one.
10 Plaintiff has only one location.
11

12
13 39. When Plaintiff requested clarification of the "closer" location in the
14 preceding example, the prospective patient cited an address belonging to Defendant.

15 40. In another instance of confusion in or around late May, 2024, an unknown
16 man entered Plaintiff's place of business to trying to sell PDO threads. This man was under
17 the apparent and incorrect belief that Curated Medical was affiliated with the "Track
18 Club".
19

20 41. Upon information and belief, the "Track Club" referred to a gym in Phoenix.

21 42. Curated Medical is not affiliated with any business called the "Track Club".

22 43. Upon information and belief, CurateMD is associated or affiliated with the
23 Track Club.
24

25 44. Upon information and belief, this aforesaid instance of confusion was
26 caused by CurateMD's affiliation with the Track Club.
27
28

1 45. In another instance of confusion, a prospective patient seeking fillers, upon
2 information and belief, scheduled an appointment with CurateMD.

3
4 46. The aforesaid prospective patient initially communicated with Plaintiff on
5 or about June 22, 2023. After a subsequent exchange of texts and a voice call, on or about
6 July 12, 2023, this prospective patient sent a text to Plaintiff which indicated in relevant
7 part that she already had scheduled a consultation with “Morgan” for July 21.

8
9 47. No individual named “Morgan” worked for Plaintiff at that time.

10 48. Upon information and belief, the aforesaid prospective patient had become
11 confused with CurateMD and scheduled a consultation with that practice.

12
13 49. In another instance of confusion, on or about August 23, 2024, a prospective
14 patient called from an unrecognized number referring to a nonexistent appointment.

15 50. This aforesaid prospective patient claimed to have an appointment
16 scheduled for August 24, 2024. After speaking with Plaintiff’s receptionist for several
17 minutes without being able to match any scheduled appointment to that individual, the
18 prospective patient hung up to try to call the correct number.

19
20 51. Upon information and belief, the aforesaid prospective patient had become
21 confused between Curated Medical and CurateMD.

22
23 52. The preceding examples of actual confusion are illustrative and do not
24 comprise an exhaustive recitation.

25
26 53. Indeed, besides the specific instances of confusion shown above, Plaintiff
27 has experienced that searching for Curated Medical in online map and review services
28

1 including Apple Maps, Google Maps, Yelp, and others will yield results displaying both
2 Curated Medical and CurateMD.

3
4 54. These aforesaid examples and other examples of actual confusion in the
5 market damage Plaintiff and dilute the goodwill associated with Plaintiff's Mark by
6 causing potential patients to be wrongfully directed to Defendants.

7
8 55. Upon information and belief, these known and suspected instances of
9 confusion indicate a high likelihood of many more instances of confusion unknown to
10 Plaintiff at this time.

11
12 56. Upon information and belief, Defendant is at least constructively aware of
13 other instances of actual confusion.

14
15 57. These aforesaid examples and other examples of actual confusion in the
16 market damage Plaintiff and dilute the goodwill associated with Plaintiff's Mark by
17 causing past, present, or prospective wrongful, substandard, dissatisfactory, or otherwise
18 inadequate acts or omissions by Defendants to be wrongfully attributed to Plaintiff.

19
20 58. These aforesaid wrongful attributions of acts and omissions to Plaintiff yet
21 further damage Plaintiff and dilute the goodwill associated with Plaintiff's Mark in those
22 instances in which a patient of Defendant publishes a review online falsely attributing
23 such acts and omissions to Plaintiff.

24
25 59. Plaintiff is further constrained to act, and has so acted, to mitigate the effects
26 of such confusion by regularly monitoring online message boards hosting reviews of
27 Plaintiff's business and attempting to correct such confusion as quickly as possible.
28

1 60. Upon information and belief, Defendant is at least constructively aware of
2 the difficulty and expense required to mitigate the effects of such confusion.

3
4 61. Plaintiff has demanded that Defendants cease and desist in the use of the
5 Infringing Brand since at least as early as October 2023, but Defendant has refused.

6 62. In the course of making Plaintiff's demands, Plaintiff cited several instances
7 of actual confusion to Defendant; consequently, Defendant is aware of at least some
8 instances of actual confusion.

9
10 63. In spite of the aforesaid knowledge, Defendant has knowingly, willfully, and
11 intentionally continued to use Defendant's Brand.

12
13 64. Defendant's continued intentional and wrongful use of Defendant's Brand
14 has caused and continues to caused confusion in the market and diluted Plaintiff's Brand.

15 65. Accordingly, Plaintiff is entitled to relief as appropriate for each cause of
16 action set forth below.

17
18 **FIRST CAUSE OF ACTION**

19 **Federal Trademark Infringement per 15 U.S.C. 1114 *et seq.***

20 66. Plaintiff incorporates by reference all allegations set forth in the preceding
21 paragraphs as though fully set forth herein.

22
23 67. Plaintiff is the owner of the registered trademark "CURATED MEDICAL"
24 bearing the registration number 7483572.

25
26 68. Defendant's Brand "CurateMD" is confusingly similar to Plaintiff's Mark
27 "Curated Medical".

28 69. Upon information and belief Defendants are aware that Plaintiff holds

1 interest in and ownership of Plaintiff's Mark.

2 70. Plaintiff has firsthand knowledge of multiple instances of actual confusion
3 between Plaintiff's Mark and Defendant's Brand, as set forth in the preceding sections of
4 this Complaint.
5

6 71. Upon information and belief, Defendants are aware of actual confusion in
7 the market between Defendant's Brand and Plaintiff's Mark.
8

9 72. In spite of Defendant's knowledge of actual confusion and the obvious
10 confusing similarity of Defendant's Brand to Plaintiff's Mark, Defendant continues to use
11 Defendant's Brand.
12

13 73. Defendant's actions constitute willful infringement under the Lanham act.

14 74. Defendants' aforesaid actions have damaged Plaintiff and will continue to
15 damage Plaintiff, causing confusion in the market, dilution of Plaintiff's Mark, and
16 damaging Plaintiff's goodwill in the market unless enjoined by this court.
17

18 75. Defendants' aforesaid acts are greatly and irreparably damaging to Plaintiff
19 and will continue to inflict irreparable damage unless enjoined by this Court; without this
20 result, Plaintiff is without adequate remedy.
21

22 **SECOND CAUSE OF ACTION**

23 **Arizona State Statutory Trademark Dilution per 44 A.R.S 1448.01**

24 76. Plaintiff incorporates by reference all allegations set forth in the preceding
25 paragraphs as though fully set forth herein.
26

27 77. Plaintiff is the owner of state trade name rights for the term "Curated
28 Medical".

1 78. Plaintiff is the owner of common law rights to the term “Curated Medical”
2 for the medical spa goods and services in Arizona.

3 79. Plaintiff has invested considerably into the use of the “Curated Medical”
4 mark for the aforesaid goods and services.
5

6 80. Plaintiff has invested considerably into advertising and publicity of the
7 “Curated Medical” mark for the aforesaid goods and services.
8

9 81. Due to the effect of these aforesaid acts, Plaintiff’s “Curated Medical” mark
10 has acquired distinctiveness within at least the State of Arizona.

11 82. Plaintiff’s “Curated Medical” mark is a famous mark in the State of Arizona.
12

13 83. Defendant’s Brand, “CurateMD”, is confusingly similar to and likely to
14 cause confusion with Plaintiff’s Mark, “Curated Medical”.

15 84. Defendant’s Brand, “CurateMD”, is likely to dilute Plaintiff’s “Curated
16 Medical” trademark.
17

18 85. Defendant’s Brand, “CurateMD”, is marketed in the same channels for
19 similar services as Plaintiff’s “Curated Medical” mark.
20

21 86. The aforesaid confusion is likely to cause, and has actually caused, actual
22 mistake by persons as to the affiliation, connection, or association between Defendants and
23 Plaintiff.

24 87. Upon information and belief, Defendant is aware of the aforesaid confusion
25 and dilution of Plaintiff’s “Curated Medical” mark.
26

27 88. Upon information and belief, Defendant has continued to willfully act in such
28 a way as to cause confusion and dilution of Plaintiff’s “Curated Medical” mark.

1 89. The aforesaid confusion is likely to cause, and has actually caused, dilution
2 of Plaintiff's trademark.

3
4 90. The aforesaid confusion is likely to cause, and has actually caused, actual
5 confusion and mistake by persons as to the origin, sponsorship or approval of the goods,
6 services or commercial activities offered by Plaintiff under the "Curated Medical" mark.

7
8 91. Defendants' aforesaid acts are greatly and irreparably damaging to Plaintiff
9 and will continue to inflict irreparable damage unless enjoined by this Court; without this
10 result, Plaintiff is without adequate remedy.

11
12 **THIRD CAUSE OF ACTION**

13 **Common Law Unfair Competition as authorized under 44 A.R.S. 1452**

14 92. Plaintiff incorporates by reference all allegations set forth in the preceding
15 paragraphs as though fully set forth herein.

16
17 93. Plaintiff has invested substantial money and effort into the development of
18 goodwill associated with Plaintiff's Mark since 2020.

19 94. Plaintiff's efforts have resulted in substantial recognition in the market in
20 Arizona, particularly in the Valley area and especially in the competitive Scottsdale market
21 for wellness and cosmetic treatments and goods.

22
23 95. Plaintiff's efforts have resulted in a substantial online footprint associated
24 with Plaintiff's Mark.

25
26 96. Upon information and belief, Defendant is aware of Plaintiff's interest in
27 Plaintiff's Mark.

28 97. Defendant's Brand is confusingly similar to Plaintiff's Mark.

1 98. Defendant's Brand has caused and continues to cause substantial confusion,
2 mistake, or deception of the public as to the association of Defendant's Brand, Plaintiff's
3 Mark, and the entities and affiliates of Defendant and Plaintiff.
4

5 99. Defendants' aforesaid acts enable and will continue to enable Defendants to
6 obtain the benefit of and trade on the goodwill of Plaintiff.
7

8 100. Defendants' aforesaid acts damage and will continue to damage Plaintiff's
9 goodwill in that Plaintiff does not have control over the business and services of
10 Defendants.
11

12 101. Defendants' aforesaid acts have resulted in and will continue to result in
13 unjust enrichment of Defendants.
14

15 102. Defendants' aforesaid acts are greatly and irreparably damaging to Plaintiff
16 and will continue to inflict irreparable damage unless enjoined by this Court; without this
17 result, Plaintiff is without adequate remedy.
18

19 **FOURTH CAUSE OF ACTION**

20 **State Trade Name Infringement per 44 A.R.S. 1460.05**

21 103. Plaintiff is the owner of the Arizona state trademark registration bearing the
22 file number 9197842.
23

24 104. Defendant's Brand, "CurateMD", is confusingly similar to and likely to
25 cause confusion with Plaintiff's Mark, "Curated Medical".
26

27 105. Defendant's Brand, "CurateMD", is a colorable imitation of Plaintiff's
28 "Curated Medical" mark.

 106. The aforesaid confusion is likely to cause, and has actually caused, actual

1 mistake by persons as to the affiliation, connection, or association between Defendants and
2 Plaintiff.

3
4 107. The aforesaid confusion is likely to cause, and has actually caused, actual
5 mistake by persons as to the origin, sponsorship or approval of the goods, services or
6 commercial activities offered by Plaintiff, the owner of the registered mark.

7
8 108. Defendants' aforesaid acts are greatly and irreparably damaging to Plaintiff
9 and will continue to inflict irreparable damage unless enjoined by this Court; without this
10 result, Plaintiff is without adequate remedy.

11 **CONCLUSION**

12
13 WHEREFORE, Plaintiffs request judgment against Defendants, and each of them,
14 as follows:

- 15 A. For damages in the amount to be proven at trial, amounting to Plaintiff's profits
16 garnered under the CurateMD mark since its first use by Defendants and treble
17 damages for willful infringement where applicable, but in any event no less than
18 \$300,000;
19
20 B. For pre-judgment and post-judgment interest on the awarded sum at the highest
21 rate allowed by law, until paid in full.
22
23 C. For a decree enjoining and restraining Defendant's from all further use of
24 Defendant's Brand and any other mark confusingly similar to or a colorable
25 imitation of Plaintiff's Mark.
26
27
28

1 D. For a decree ordering Defendants to immediately destroy, and to certify destruction
2 of, any articles bearing Defendant's Brand and any other mark confusingly similar
3 to or a colorable imitation of Plaintiff's Mark.
4

5 E. For Plaintiff's reasonable attorneys' fees and costs incurred in this matter, pursuant
6 to 18 USC §§ 2520 & 2707 as well as 15 USC §1117(a).
7

8 F. For all reasonable post-judgment costs and attorneys' fees incurred by Plaintiff in
9 pursuing collection of its judgment, subject to review of this Court as to their
10 reasonableness under the standards governing the award of attorney fees.
11

12 G. For the continuing jurisdiction of this Court to review and determine the
13 reasonableness of any post-judgment costs and attorneys' fees sought by Plaintiff
14 and to enforce judgments by appropriate means under the Federal Rules.
15

16 H. For any other relief as the Court may deem just and proper under the circumstances.
17

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RESPECTFULLY SUBMITTED this 28th day of October, 2024.

INVENTIVE IP, PLLC
The Law Office of Robert J. McGee

/s/ Robert J. McGee
Robert J. McGee, Esq.
Attorney for Plaintiff

ELECTRONICALLY FILED
this 28th day of October, 2024.

By: /s/ Robert J. McGee